

3:06-cv-0438

1. On January 22, 2007, the United States Army Corps of Engineers (“Corps”) issued individual Clean Water Act Permit No. 199800436-3 to Mingo Logan, authorizing the discharge of fill material into waters of the United States associated with the Spruce No. 1 mine located in Logan County, West Virginia. (the “Spruce No. 1 Permit”).

2. By letter dated September 3, 2009, EPA requested the District Engineer for the Corps' Huntington District to exercise his discretionary authority under 33 C.F.R. § 325.7 to suspend, revoke or modify the permit. In the letter, EPA asserted that new information and circumstances had arisen since the issuance of the permit in January, 2007 which justified reconsideration of the permit decision.

3. On September 4, 2009, the United States moved this Court to stay the proceedings regarding the Spruce No. 1 permit in order to provide the Corps an opportunity to determine whether the information provided by EPA warranted the exercise of its discretionary authority to suspend, modify or revoke the permit. Doc. No. 459. By Order dated September 15, 2009, this Court granted the United States' motion. Doc. No. 461.

4. By letter dated September, 30, 2009, the District Engineer for the Huntington District of the Corps responded to EPA's request, and advised that he had determined not to exercise his discretionary authority to suspend or modify or revoke the Spruce No. 1 permit.

5. On October 5, 2009, the United States moved this Court to extend the stay of proceedings regarding the Spruce No. 1 permit for an additional thirty days in order to provide EPA an opportunity to consider whether to exercise its authority under CWA § 404(c) to prohibit discharges into waters of the United States as authorized by the Spruce No. 1 permit. Doc. No. 463. By Order dated October 21, 2009, this Court granted the United States' Motion. Doc. No. 466.

6. By letter dated October 16, 2009, EPA formally initiated the administrative process to exercise its Section 404(c) authority by notifying the Corps that, pursuant to 40 C.F.R. § 231.3(a), it intended to issue a public notice of a proposed determination to restrict or prohibit the discharge of dredged or fill material at the Spruce No. 1 Mine project site consistent with

[EPA's] authority under Section 404(c) of the Clean Water Act . . . ." In accordance with EPA regulations, 40 C.F.R. § 231.3(a)(2), that letter initiated a 15 day period for the recipients of the letter to demonstrate that no unacceptable adverse effects will occur, or that corrective action will be taken to prevent unacceptable adverse effects.

7. During that initial 15 day period, EPA and the Corps and Mingo Logan met to discuss options for further reducing adverse environmental impacts associated with the Spruce No. 1 permit. EPA and Mingo Logan agreed to continue their discussions regarding EPA's concerns. EPA granted a 15 day extension of the period described in 40 C.F.R. § 231.3(a)(2) for Mingo Logan to provide additional information pertinent to EPA's evaluation of the Spruce No. 1 permit. Accordingly, the United States filed an unopposed motion to extend the stay issued by this Court for an additional 30 days, until December 4, 2009. Doc. No. 467. The Motion was granted by Order of this Court dated November 5, 2009. Doc. No. 468. On December 4, 2009, the United States filed another unopposed motion to extend the stay issued by this Court for an additional 30 days, until January 4, 2010. Doc. No. 469. The Motion was granted by Order of this Court dated December 7, 2009. Doc. No. 471.

8. During the extended stay period, EPA and Mingo Logan have had additional discussions regarding options for further reducing adverse environmental impacts associated with the Spruce No. 1 permit and, while significant progress has been made, agreement has not yet been reached. Accordingly, EPA has again extended the 15 day period for negotiations and the United States is respectfully moving this Court to extend the stay of proceedings regarding the Spruce No. 1 Permit for an additional 60 days.

9. Neither the Plaintiffs nor the Intervenor Mingo Logan Coal Company oppose this motion.

DATED: January 4, 2010

Respectfully submitted,

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/s/Cynthia J. Morris

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
HUNTINGTON DIVISION

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OHIO VALLEY ENVIRONMENTAL  
COALITION, et al.,

Plaintiffs,

v.

UNITED STATES ARMY CORPS OF  
ENGINEERS, et al.,

Defendants,

ARACOMA COAL COMPANY, et. al.,

Intervenor-Defendants

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Civil Action Nos. 3:05-cv-0784

3:06-cv-0438

**[PROPOSED] ORDER**

Pending is the United States' Unopposed Motion to Extend the Stay of Proceedings Regarding the Mingo Logan Coal Company's Spruce No. 1 Permit for an Additional 60 Days. For reasons apparent to the Court, the Court GRANTS the motion.

All proceedings regarding the Mingo Logan Coal Company's Spruce No. 1 Permit will be stayed until March 5, 2010.

The Court DIRECTS the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTERED: January \_\_\_, 2010

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ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
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OHIO VALLEY ENVIRONMENTAL  
COALITION, et al.,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 4<sup>th</sup> day of January, 2010, I electronically filed the foregoing “Unopposed Motion to Extend Stay of Proceedings Regarding Mingo Logan Coal Company’s Spruce No. 1 Permit for an Additional 60 days” and [Proposed] Order with the Clerk of the Court using the CM/EMF system which will send notification of such filing to the following:

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